

**FILED**

**DEC 8 2016**

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DARRELL LUCKETT, JR.,

17 Defendant.  
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) NO. 3:16-CR-00200 (WHO)

) **JOINT STIPULATIONS AND**  
) **WAIVERS FOR BENCH TRIAL**

) *Dec. 8, 2016*  
) Date: ~~November 10, 2016~~

) Time: 1:30 p.m.

) Court: The Hon. William H. Orrick

1 The parties respectfully submit the following stipulations and waivers in anticipation of a bench  
2 trial before this Court on November 10, 2016.

3 **I. WAIVER OF RIGHTS**

4 1. Pursuant to Federal Rule of Criminal Procedure 23, Lockett waives his right to a jury trial  
5 and the government consents to have the Court conduct the trial in this case.

6 2. Lockett waives his right to testify, to cross-examine witnesses called by the government,  
7 and to call witnesses on his own behalf.

8 3. The parties agree that the Court can rely on the declarations submitted at the motions  
9 hearing on September 1, 2016, and the stipulations below to decide whether Lockett is guilty or not  
10 guilty of the charges, and they submit the matter for decision by the Court on that basis.

11 **II. FACTUAL STIPULATIONS<sup>1</sup>**

12 1. If called to testify at trial, Officer Cunnie of the San Francisco Police Department would  
13 testify as follows:

14 a. Officer Cunnie first encountered Lockett in the summer of 2015. Officer Cunnie had  
15 reviewed Lockett's criminal history at some point in the summer of 2015, and Officer  
16 Cunnie knew that Lockett was serving a term of probation with a search condition.

17 b. On March 20, 2016, Officer Cunnie was patrolling the Tenderloin area of San Francisco,  
18 California, near the intersection of Turk Street and Leavenworth Street. Officer Cunnie  
19 and his partner, Officer Steve Orengo, were in full police uniform, and they were driving  
20 a marked police car.

21 c. The officers were driving west on Turk Street, moving at approximately 10 miles per  
22 hour, when Officer Cunnie saw Lockett walking east towards them. When Lockett saw  
23 the police car, he stopped, turned around, and started walking away. The officers then saw  
24 Lockett enter a liquor store.

25  
26 <sup>1</sup> The parties agree to a bench trial and stipulate to the facts described below. The parties enter  
27 into these stipulations with the understanding that Lockett is not rendering moot his right to appeal the  
28 denial of his motion to suppress, and not waiving his objection to the introduction of the evidence that  
he argued should be suppressed. *United States v. Larson*, 302 F.3d 1016, 1020 (9th Cir. 2002) (stating  
that appeal after a bench trial by stipulated facts not moot if the stipulations merely describe evidence  
the government intended to introduce at trial).

- 1 d. The officers circled around the block, and when they returned they saw Lockett heading  
2 east on Turk Street again. Lockett again started to pick up speed and twisted his body  
3 away from the officers.
- 4 e. Officer Cunnie asked Lockett to stop so they could talk, but Lockett continued walking.  
5 Officer Cunnie then told Lockett that he was being detained, but Lockett ignored him  
6 again.
- 7 f. The officers then caught up to Lockett, stopped him, and tried to pat him down. Lockett  
8 resisted, so the officers forced him to the ground and patted down the exterior of his  
9 clothing.
- 10 g. Officer Cunnie felt a hard, barrel-shaped object under Lockett's sweatshirt. Cunnie lifted  
11 up the sweatshirt and saw that Lockett was carrying a handbag by his right hip. Inside the  
12 handbag, Officer Cunnie found a Colt .45 pistol, Model 1911, bearing serial number  
13 2303752. The gun was loaded with various rounds of ammunition. The gun also bore the  
14 engraving: "United States property." Lockett was arrested.
- 15 h. In a post-arrest interview, Lockett waived his *Miranda* rights and told Officer Cunnie that  
16 he was carrying the firearm.

17 2. The parties stipulate that Lockett sustained a felony conviction in 2013 for a violation of  
18 Section 459 of the California Penal Code, which was punishable by more than one year of  
19 imprisonment.

20 3. The parties stipulate that that the Colt .45 pistol, Model 1911, bearing serial number  
21 2303752, was manufactured outside the State of California, and therefore traveled in interstate  
22 commerce before being found in San Francisco, California on March 20, 2016.

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1           4.       The parties stipulate that the firearm and the recording of Lockett's post-arrest interview  
2 described above are deemed admitted into evidence for the purpose of this bench trial, subject to  
3 Lockett's objection noted above.

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6 IT IS SO STIPULATED.

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8           *Dec. 8, 2016*  
9 Dated: ~~November 10, 2016~~


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11           *Dec. 8, 2016*  
12 Dated: ~~November 10, 2016~~

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